

Item 4(c)/4(d)

Verne, B. Michael

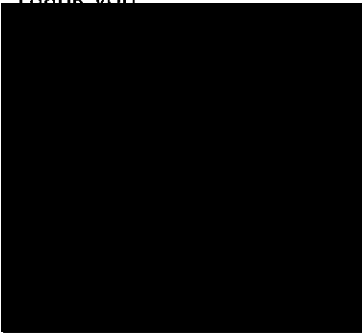
From: [REDACTED]
Sent: Wednesday, July 25, 2012 2:11 PM
To: Walsh, Kathryn; Verne, B. Michael
Subject: 4(c)/(d) Question

Mike and Kate,

Hope all is well and you're enjoying your summers.

I wanted to check that this interpretation still reflects the PNO's position. In particular, I want to confirm that a document created by or for a member of a private equity fund investment committee is not a 4(c)/(d) where it was not prepared by or for the investment committee member in his capacity as a member of the acquiring entity's board. In this scenario, the private equity fund has a minority interest in and does not otherwise control the acquiring entity.

Thank you



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Our current approach to this is you make the call. I think it is a very difficult line to establish and if I were advising a client I would have them provide all docs prepared by or for a director of the filing party, regardless of which hat he is purportedly wearing at the time. That said, if you think there is enough of a firewall to insulate the director in his role as venture capital fund representative from his role as director of the filing party, don't provide the document. You need to make sure you have a strong argument supporting this because if the document shows up in a second request production I'm sure it will get questioned by a litigation shop.

BM
7/25/12